

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DARYL TOEWS**, on January 25, 1999 at 3:30 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. Bill Glaser, Vice Chairman (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis (R)
Sen. John Hertel (R)
Sen. Bob Keenan (R)
Sen. Debbie Shea (D)
Sen. Spook Stang (D)
Sen. Mignon Waterman (D)

Members Excused: Sen. Mike Sprague (R)
Sen. Jack Wells (R)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 246, 1/21/1999
Executive Action: None

HEARING ON SB 246

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: Lance Melton, Montana School Boards Association;
School Administrators of Montana;
Montana Rural Education Association
Eric Feaver, Montana Education Association & Montana
Federation of Teachers

Opponents: None

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, said the bill provided greater authority and local control to elected school board trustees in managing school district funds. Present law empowered school trustees to invest district funds through only one (1) mechanism -- the county treasurer; however, school districts needed other options. He gave an example of a potential problem, i.e. a newly elected county treasurer who knew nothing about investing funds. He explained **SB 246** allowed school district trustees additional and sensible options in managing the investments by allowing them to pool with other districts in independently invested funds. He said the bill was written with a lot of safeguards in that it didn't seek to expand the list of permissible areas for investment of school district funds. Also, it required the school district to use the services of a licensed investment company or State Board of Investments for the program.

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA); also School Administrators of Montana (SAM) & Montana Rural Education Association (MREA) said they supported the bill and the people in **EXHIBIT(eds19a01)** supported it also. He said **SB 246** came about because districts basically learned there was a nuance in the law that prohibited what some districts did in the past -- invest district funds by pooling with other school districts, but not always through the county treasurer. He referred to **SB 134** which covered problems which arose when a person was not sensitive to distinctions between permissible county investments and school district investments. This bill sought to not abandon investing through the county treasurer, but to give school districts other investment options that were within the tight guidelines of present law under school district investments. He reiterated **SB 246** allowed school districts the choice between being involved with the county treasurer or contracting independently with a licensed investment company or the State Board of Investments. **Mr. Melton** said there were other states who used this process and did quite well; in fact, school districts found investment companies were attuned to coming in to work specifically with the education community as a specific type of clientele. He said the

goal was to allow school districts to find ways to reduce the impact of local property taxes to the extent they could soundly invest and raise revenue. He urged the Committee's strong support of **SB 246**.

Eric Feaver, Montana Education Association (MEA) and Montana Federation of Teachers (MFT), said they rose in support of the bill because it made sense to give school districts more authority in how they invested their funds. He said he wasn't sure the bill said all that because there were a lot of "mays"; both the sponsor and **Mr. Melton** spoke of those as "shall" -- he urged the Committee to take a closer look. He urged the Committee's consideration of **SB 246**.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 5.3}

Questions from Committee Members and Responses:

SEN. ALVIN ELLIS said when he served on the Red Lodge School Board they already did this; perhaps it was without legislative approval. He said they invested their money every month after the school board meeting and decided which bank's offer they would take. He also said he had served on a rural board but didn't remember dealing with investments -- he assumed the county treasurer did that. He suggested that was a good way to have it. **Eric Feaver** asked which way he wanted -- the way they did it in Red Lodge or the way the rural board did. **SEN. ELLIS** responded either way. **Eric Feaver** commented **SB 246** didn't require school districts to do anything besides what they were doing now; however, it gave them the legality to do what **SEN. ELLIS** described as happening in Red Lodge.

SEN. DARYL TOEWS asked about "global interest" in one of the testimonies in **Exhibit 1**. **Lance Melton** said he didn't edit his members' testimony; he had seen that phrase but passed it on because it reflected the interest of that member. He said he didn't think the member meant anything by that term.

SEN. TOEWS asked what types of investments were presently allowed by law and **Lance Melton** referred to Page 3, Subsection 4, Lines 21-24, provide for the permissible investments under present law. Also, Line 30, the Unified Investment Program, referenced Title 7 and Title 17.

SEN. TOEWS referred to code 7-6-213 on Line 24, "that meets the criteria provided for" and asked for explanation. **Lance Melton**

said 213 was one, but not the only, area in which counties could invest. Counties had provisions from 213 to 220 and this was one of the sections identified in Title 7. He said there was a link to permissible investments for certain types of county funds

SEN. BARRY "SPOOK" STANG asked **Lance Melton** how he defined "may" and was told it was his intent in drafting the language on page 4 that by providing two (2) permissible means, a choice would have to be made. He agreed he might have been less than clear; however, there was a way to fix that, i.e. strike "may" and insert "shall" on Line 4, on Line 6 strike "may" and insert "shall either" and on Line 8 strike "and may" and insert "or shall".

SEN. TOEWS asked for more clarification on Page 3, Line 21, "or by directly investing the money of the district", suggesting the treasurer still did the direct investing -- the school district was only giving directives. **Mr. Melton** said what they were seeking was to give the school district the opportunity to go either through the county treasurer to invest as directed or to choose to independently invest with a licensed investment company or directly approach the state of Montana through the Unified Investment Program.

SEN. TOEWS asked about the annual or biennial audit. **Lance Melton** said there were school districts who were managing very well on this; this was a subtle nuance in the law -- it could be argued the only way the trustees did not have the present authority to do this independently was "by directing the county treasurer to". It was his opinion there wouldn't be any more errors in judgment by elected district officials than by an elected county treasurer. He reminded the Committee **SB 246** was not seeking to do anything outside what the law specifically allowed in the area of investment; rather, it was to place greater control in the hands of the local trustees.

{Tape : 1; Side : A; Approx. Time Counter : 10.8}

SEN. BILL GLASER commented **SB 246** was an "either/or" situation and wondered what would happen if the school board wished to invest half with the county and half in investments. **Lance Melton** said the bill would allow them to do that. **Mr. Melton** invited the Committee members to help with drafting language that was more clear, reminding them the intent was to allow school districts to do any combinations of these investing avenues, i.e. put some with the county and some in a pooled fund with other districts independent of the county or to put some funds with the State Investment Program. He further clarified by saying they didn't intend for the language to say the school district had to

invest every investable dollar in exclusively one (1) area.

Closing by Sponsor:

SEN. DALE MAHLUM said as he perceived the bill, a school district could have a large sum of money, some of which might be allocated in certain areas. However, the district could take what was left over to a local bank and get a 60-or 90-day CD or something similar on which they could earn interest. He expressed appreciation to **Eric Feaver** for good ideas on amendments and to **Lance Melton** for his excellent insight into the internal operations of schools. He referred to auditing and said many schools could procure their own internal audit. He summed up by saying **SB 246** allowed local school boards to have variable pricing with their money; he recommended a DO PASS.

{Tape : 1; Side : A; Approx. Time Counter : 16}

CLARIFICATION INFORMATION ON SB 150

Kathy Fabiano, Office of Public Instruction (OPI), read her written clarification of **SB 150 EXHIBIT (eds19a02)**.

Discussion:

SEN. BARRY "SPOOK" STANG suggested preparing an amendment which would remove the limit for those people going to and from the bus stop outside the three-mile-limit so it would reduce the fiscal impact on the state from \$290,000 to \$99,000. He explained he felt if people wanted to drive to town through the three-mile limit, it was their choice; nobody inside the three-mile-limit got paid to transport their kids to school -- they did it because the bus didn't pick them up voluntarily. He stated further they shouldn't be reimbursed for the six (6) miles within the three-mile-limit but for the miles outside that limit; basically it was Option #1 on **Kathy Fabiano's** clarification sheet.

CHAIRMAN DARYL TOEWS said the amendment would be prepared and later there would be discussion and action on the whole bill with amendments.

{Tape : 1; Side : A; Approx. Time Counter : 21.3}

CLARIFICATION INFORMATION ON SB 199

Susan Byorth Fox, Legislative Services Division, said "detention" was a county function; there were three (3) long-term detention facilities and the rest were short-term facilities. **SB 199** would mostly impact the long-term facilities. Detention was initially intended to be "pre-adjudicated", i.e. they were held preceding the decision of whether or not there should be a disposition; it was a civil process so it was not quite the same as a conviction for adults. She said during the last Legislative Session, **SB 48** allowed some post-adjudication holding in a facility, but it was on a space-available basis and was limited to three (3) or ten (10) days; therefore, the numbers of those youth was few. If educational services were available at those facilities, they would be provided to those kids; however, those are not the ones there was concern over -- it was the pre-adjudicated kids that might be there for a very, very long time, one reason being awaiting transfer to an adult court. She said examples of post-adjudication were Pine Hills, new girls correctional facility in Boulder, the Montana Youth Alternatives (MYA) or the Rebound Program and all were under the responsibility of the Department of Corrections; their education was dealt with under other programs. She said post-adjudication kids who were sent out of state had their educational costs paid for through the Department of Corrections and Office of Public Instruction. **Ms. Fox** again stressed it was the kids who were in the middle who **SB 199** addressed -- those who were taken from their homes because they got into trouble and were put into detention and who were currently receiving different kinds of educational services in different areas with different payment schemes. She said the amendments tried to put into statute how the Flathead facility had been able to work in regards to tuition; however, she understood **SB 199** was drafted with the intention the granting proposal was to stay out of that tuition scenario, i.e. not interrupt the flow of ANB money in regular school districts, but to set aside a separate portion of money to take care of these kids in detention.

Discussion:

SEN. JON ELLINGSON referred to the pre-adjudication detention facilities and asked if some of the youth were kept there for long periods of time before they reached trial. **Susan Fox** said they could be, though those numbers were not large.

SEN. ELLINGSON asked if the youth had a right to a speedy trial, as did adults. **Ms. Fox** said Montana's Constitution had a very strong provision which said children had all the same rights as adults, so they did.

SEN. ELLINGSON commented they had a right to a speedy trial, yet could be held in the detention facility prior to adjudication longer than an adult. **Susan Fox** said some of it was traditionally Youth Court was seen as a totally civil process based on the parents' right to protect the child, though over the past 10 years, the system had become more like the criminal justice system; however, it hadn't quite gotten there yet so it was sort of in limbo. She further explained it was a civil process with criminal overtones -- they should have the same rights as the adults; in fact, the Supreme Court used the Constitutional provisions to recently strike down a portion of the Youth Court Act.

SEN. ELLINGSON asked for clarification on the funding, both as in the bill itself and also with the funding options. **Ms. Fox** said Section 8 talked about the payment of detention costs and gave as the vehicle the facility reporting to the county superintendent based on ADP so it somewhat paralleled the system; however, the money would come from the grant fund. Currently today, under the tuition statutes, this could have been done anyway; however, it was so cumbersome and many counties said once the kids got into trouble they weren't their responsibility so some of the counties were not cooperating in this tuition agreement. It took money out of the schools because a place had to be kept for that kid whether or not he or she was in detention; therefore, the two (2) facilities were competing for the same funds. She believed Options 1 and 2 by Montana Rural Education Association (MREA) contemplated using the tuition structure currently in statute. She said she understood the intent of **SB 199** was to leave that alone and have a separate fund to access, and the basis for it would be the number of kids.

{Tape : 1; Side : A; Approx. Time Counter : 33.5}

SEN. ELLINGSON asked if under the bill as drafted, the money to pay for the educational services come from the county of location for the detention facility, or did it come from the county of the detained youth. **Gail Gray, Office of Public Instruction (OPI)**, said she understood the money would come from the county of location of the detention facility and would be taken from the money which was collected for the county-wide mills which ultimately became the state-wide mills for the support of education. So in essence, the state was paying for it though county tuition anyway. She said it was much more complicated when three (3) different counties were involved.

SEN. ELLINGSON asked if a county had a detention center, was the pool of money available for funding the county residents who attended public schools limited because the youth in detention

had to have their educational services paid for. **Gail Gray** said the local entities would not; however, the state would because the money sent in by the counties would be less.

SEN. MIGNON WATERMAN asked the basis for the fiscal note -- was it assumed the 100 kids would be there all 180 days, 365 days, or what. **Susan Fox** said education in detention was year-round; however, some kids were there 2 hours, 2 days and sometimes 30 days.

SEN. WATERMAN asked if there would be educational costs for the youth who was in the detention facility only 2 days. **Ms. Fox** said she was of the opinion if the youth was there only a couple of days, education might not be something they would do; however, if it was almost at the 10-day mark they would be doing that. If someone were there four (4) or five (5) days there would be enough time to ask about school enrollment, grade placement, etc. If the youth were an active school participant, that would provide an opportunity to get their homework to them; however, if truancy were the reason, and if the detention stay was short-term, nothing educational would be done until they were there for a longer period of time. She said she was sure if there were services that could be rendered easily to a student who was there only three (3) to five (5) days, that would be a benefit of having a person on staff.

SEN. WATERMAN asked if there were demographics available as to how many were there for a short period of time and how many were there for a longer period of time. **Susan Fox** said she had never seen those statistics because the Board of Crime Control did some reimbursement to the detention facilities for room and board costs. It would be possible to call over there to get the information.

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SEN. BILL GLASER said there were 24 cells in Billings and wondered how many were in Kalispell, Missoula and Great Falls. **Susan Fox** said they were licensed for eight (8) youth, regardless whether they were bunked, double or single. They couldn't put 16 kids in if they were licensed for only eight (8); however, they had now added licensure for an additional 16 kids. The Board of Crime Control would have the descriptions for the facilities which for other than long-term care; the previously-mentioned four (4) facilities were potential long-term facilities.

SEN. DEBBIE SHEA referred to Section 8, Page 7, Line 24, and said she wanted to add "by certified personnel" as an amendment.

CHAIRMAN TOEWS said **Eddye McClure** would take care of that.

ADJOURNMENT

Adjournment: 3:50 P.M.

January 25, 1999

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SEN. DARYL TOEWS, Chairman

JANICE SOFT, Secretary

DT/JS

EXHIBIT (eds19aad)